

# INTRODUCTION to the LAWS & RULES of LAND USE PLANNING

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## I. OVERVIEW

### A. Utah Code Ann. § 17-27a-102(1)(a):

“The purposes of this chapter are to:

- (i) provide for the health, safety, and welfare;
- (ii) promote the prosperity;
- (iii) improve the morals, peace, good order, comfort, convenience, and aesthetics of each county and each county's present and future inhabitants and businesses;
- (iv) protect the tax base;
- (v) secure economy in governmental expenditures;
- (vi) foster the state's agricultural and other industries;
- (vii) protect both urban and nonurban development;
- (viii) protect and ensure access to sunlight for solar energy devices;
- (ix) provide fundamental fairness in land use regulation;
- (x) facilitate orderly growth and allow growth in a variety of housing types; and
- (xi) protect property values.”

### B. Village of Euclid, Ohio v. Amber Realty Co., 272 U.S. 365, 387, 47 S.Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016 (1926)

“Building zone laws are of modern origin. They began in this country about 25 years ago. Until recent years, urban life was comparatively simple; but, with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities.”

## II. DISTINCTIONS

### A. CITIES V. COUNTIES

1. Annexations, De-annexations and annexation areas.

Bluffdale Mtn. Homes v. City of Bluffdale, 2007 UT 57

### B. TRADITIONAL (HARD OR EUCLIDIAN) ZONING V. PERFORMANCE (INCENTIVE) ZONING

C. OTHER DISTINCTIONS

1. Incentives: Rewards for granting community benefits which take the form of increased allowed density.
2. Exactions: Exactions are conditions imposed by governmental entities on developers for the issuance of a building permit or subdivision plat approval. [B.A.M. Development L.L.C. v. Salt Lake County](#), 2006 UT 2, ¶ 34 *citing* [Salt Lake County v. Bd. Of Educ.](#), 808 P.2d 1056, 1058 (Utah 1991).

“They may ‘serve more than a single development’ and ‘may take the form of: (1) mandatory dedication of land for roads, schools or parks, as a condition to plat approval, (2) fees-in-lieu of mandatory dedication, (3) water or sewage connection fees, and (4) impact fees.’” [B.A.M. Development L.L.C. v. Salt Lake County](#), 2006 UT 2, ¶ 34 *quoting* [Salt Lake County v. Bd. Of Educ.](#), 808 P.2d 1056, 1058 (Utah 1991).

**Utah Code Ann. § 17-27a-507:**

A county may impose an exaction or exactions on development proposed in a land use application provided that: (1) an essential link exists between a legitimate governmental interest and each exaction; and (2) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development

**CASES TO KNOW:** [Nollan v. Cal. Coastal Comm’n](#), 483 U.S. 825 (1987)  
[Dolan v. City of Tigard](#), 512 U.S. 374, 386 (1994)  
[B.A.M. Development L.L.C. v. Salt Lake County](#), 2006 UT 2  
[Salt Lake County v. Bd. Of Educ.](#), 808 P.2d 1056, 1058 (Utah 1991)

3. Recent Trends:
  - a. Limitation on Trails
  - b. No 3<sup>rd</sup> party exactions (2015 legislative session)
  - c. Infrastructure (Development Improvements) 2019 legislative session)

4. Impact Fees:

**Utah Code Ann. § 11-36a-102(8):**

(a) "Impact fee" means a payment of money imposed upon development activity as a condition of development approval.

(b) "Impact fee" does not mean a tax, a special assessment, a building permit fee, a hookup fee, a fee for project improvements, or other reasonable permit or application fee.

**Utah Code Ann. § 11-36-301 et. seq.** sets forth process & criteria

**CASES TO KNOW:** [Alpine Homes, Inc. v City of West Jordan](#), 2017 UT 45

[Washington Townhomes v. Washington County](#) 2016 UT 43  
[Heideman v. Washington City](#), 2007 UT App 11  
[Salt Lake County v. Bd. Of Educ.](#), 808 P.2d 1056, 1058 (Utah 1991)

5. Development Improvement Agreements (Improvement completion assurance)  
[Utah Code Ann. §17-27a-103\(24\)](#)  
"Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a county to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:
  - (a) recording a subdivision plat; or
  - (b) development of a commercial, industrial, mixed use, or multifamily project.
5. Extortion?  
[Gillmor v. Thomas et. al.](#), (district court docket no. 2:05-cv-00823, appellate court docket no. 06-4124 )  
[Harvey v. Ute Indian Tribe](#) 2017 UT 75

C. LEGISLATIVE V. ADMINISTRATIVE DECISIONS

1. Who is making the decision? Planning commission can be final decision maker on administrative items only. They are recommending body on legislative decisions.
2. Is the decision creating, changing or adopting policy and laws?

[Utah Code Ann. §17-27a-103\(34\)](#)

"Land use decision" means an **administrative decision** of a land use authority or appeal authority regarding:

- (a) a land use permit;
- (b) a land use application; or
- (c) the enforcement of a land use regulation, land use permit, or development agreement.

[Utah Code Ann. §17-27a-103\(36\)](#)

"Land use regulation":

- (a) means a **legislative decision** enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;
- (b) includes the adoption or amendment of a zoning map or the text of the zoning code; and
- (c) does not include:

- (i) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or
- (ii) a temporary revision to an engineering specification that does not materially:
  - (A) increase a land use applicant's cost of development compared to the existing specification; or
  - (B) impact a land use applicant's use of land

[Baker v. Carlson](#), 2018 UT 59, ¶26

If the municipality's decision is "open-ended" and made without reference to "fixed criteria," then the decision may be legislative. *Krejci*, 2013 UT 74, ¶ 34. But if the municipality's decision involves the "application of existing law to the facts presented by an individual applicant" or is "limited to the evaluation of specific criteria fixed by law," then the decision is administrative. *Id.*

#### D. APPEALING LAND USE DECISIONS

##### 1. Appeal Authorities

[Utah Code Ann. §17-27a-103\(5\)](#)

"Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance"

##### 2. Created and controlled by Ordinance *see* [Utah Code Ann., § 17-27a-701](#)

##### 3. Powers and duties set forth in County Ordinance *see also* [Utah Code Ann. § 17-27a-702](#) (variances) and [§ 17-27a-703](#) (administrative appeals)

##### 4. Due Process: [Utah Code Ann. § 17-27a-706](#):

- (1) Each appeal authority shall conduct each appeal and variance request as described by local ordinance.
- (2) Each appeal authority shall respect the due process rights of each of the participants.

##### 5. Standard of Review

[Utah Code Ann. § 17-27a-801](#):

(3) (a) The courts shall:

- (i) presume that a land use regulation properly enacted under the authority of this chapter is valid; and
- (ii) determine only whether:

- (A) the land use regulation is **expressly preempted** by, or was enacted contrary to, state or federal law; and
  - (B) it is **reasonably debatable** that the land use regulation is consistent with this chapter.
- (b) A court shall:
- (i) presume that a final decision of a land use authority or an appeal authority is valid; and
  - (ii) uphold the decision unless the decision is:
    - (A) **arbitrary and capricious**; or
    - (B) **illegal**.
- (c)
- (i) A decision is arbitrary and capricious if the decision is not supported by **substantial evidence in the record**.
  - (ii) A decision is illegal if the decision is:
    - (A) based on an **incorrect interpretation** of a land use regulation; or
    - (B) contrary to law.
- (d)
- (i) A court may affirm or reverse the decision of a land use authority.
  - (ii) If the court reverses a denial of a land use application, the court shall remand the matter to the land use authority with instructions to issue an approval consistent with the court's decision.

See [BRAVE v. Beaver County et. al.](#), 2009 UT 8

#### OTHER CASES TO KNOW:

[Baker v. Park City](#), 2017 UT App 190  
[Outfront Media v. SLC Corp.](#), 2017 UT 74  
[Olson v. Park City](#), 2016 UT App 106  
[Bradley v. Payson City Corp.](#), 2003 UT 16  
[Patterson v. American Fork City](#), 2003 UT 7  
[Harmon City v. Draper](#), 2000 Ut App 31  
[Springville Citizens for a Better Cmty. v. City of Springville](#), 1999 UT 25, 979 P.2d 332.

#### 6. Exhausting Administrative Remedies

##### Utah Code Ann. § 17-27a-801(1):

(1) No person may challenge in district court a **land use decision** until that person has exhausted the person's administrative remedies as provided in Part 7, Appeal Authority and Variances, if applicable

See [Green v. Brown](#), 2014 UT App 155  
[Gillmor v. Summit County](#), 2010 UT 69

7. Timing of Appeals:

[Green v. Brown](#), 2014, UT App 155, ¶11

These brief limitation periods are designed to promote ,the expeditious and orderly development of a community' by ensuring that disputes are quickly resolved. *See Foutz v. City of South Jordan*, 2004 UT 75, ¶ 16, 100 P.3d 1171 (citation and internal quotation marks omitted). However, to help ensure that the right to appeal is meaningful, our supreme court has adopted a general rule that ,the appeal period begins when an affected party receives actual or constructive notice that the building permit has been issued.

[Fox v. Park City](#), 2008 UT 85, ¶ 30.

E. INITIATIVES & REFERENDA

1. Utah Constitution:

**Article I, Section 2. [All political power inherent in the people.]**

All political power is inherent in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require.

2. Recent fights [Utah Code Ann. §20A-7-401.3](#) *et. seq.*

Initiative: [Utah Code Ann. §20A-7-501](#) *et. seq.*

Referenda: [Utah Code Ann. §20A-7-601](#) *et. seq.*

Generally, **only legislative decisions** are referable to a vote of the people. Land Use Decisions as defined are always administrative.

[Baker v. Carlson](#), 2018 UT 59, ¶13

Specifically, “[l]egislative power generally (a) involves the promulgation of laws of general applicability; and (b) is based on the weighing of broad, competing policy considerations.” (*quoting Carter v. Lehi City*, 2012 UT 2.

**OTHER CASES TO KNOW:**

[Anderson v. Orem City](#) 2016 UT 50 and

[Anderson v. Provo City](#) 2016 UT 48

[Mawhinney v. Draper City](#) 2014 UT 54

III DECISION MAKERS

[Utah Code §17-27a-103\(33\)](#)

"Land use authority" means:

- (a) a person, board, commission, agency, or body, including the local legislative

- body, designated by the local legislative body to act upon a land use application;  
or
- (b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

A. PLANNING COMMISSIONS

1. Created and controlled by Ordinance
2. Powers and duties set forth in County Ordinance (Development Code) *see also* [Utah Code Ann. § 17-27a-302](#)
3. Due Process, Public Hearings and Noticing  
*See generally* [Utah Code Ann. § 17-27a-201](#) through [§ 17-27a-210](#) and [§ 17-27a-404](#)
  - a. What is “public input” and when is it appropriate?
  - b. *Ex parte* communications  
Murray v. Neth, 783 N.W.2d 424, 434 (Neb. 2010), the court held that *ex parte* communications with a decision maker can give rise to violations of due process  
Professional Air Traffic Controllers Org. v. Federal Labor Relations Authority, 685 F.2d 547, 567 (CA10 1982) the federal court ruled that where the process was “irrevocably tainted” so as to make the ultimate judgment of the agency unfair, due process has been violated.

C. LEGISLATIVE & EXECUTIVE AUTHORITIES

1. When can you say “no”?
  - a. Legislative decisions (re-zones, development agreements, etc.
  - b. Administrative applications that do not meet Code
2. Conditional Use Permits: Conditional Use Permits are **allowed uses** with conditions to mitigate the impacts. They are administrative in nature.

A conditional use is “a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.”  
[Staker v. Town of Springdale](#), 2020 UT App 174, ¶ 19 (see also Utah Code §17-27a-103(9))

Two part inquiry:

- a. Does the application meet the code requirements? If yes, the application MUST BE APPROVED
- b. Can conditions be placed on the approval to mitigate the impacts? Only if no possible way to mitigate the impact can a “no” vote be supported and then only in limited circumstances.  
See [McElhaney v. City of Moab](#), 2017 UT 65

3. Development Agreements  
[Baker v. Carlson](#), 2018 UT 59  
[Suarez v. Grand County](#), 2012 UT 72

D. PLANNING DIRECTORS AND STAFF

1. “We’re from the Government and we’re here to help.”

E. RESOLVING CONFLICTS OF INTEREST

1. Should I recuse myself or just abstain?

[Utah Code Ann. §67-16-9](#) (State ethics act) while not directly applicable to counties, good policy to follow. It requires no participation if it would “create a substantial conflict between his private interests and his public duties.”

[Utah Code Ann. §17-16a-8](#) (Counties) requires only a disclosure if there is a pecuniary interest.

2. Annual conflict statements [Utah Code Ann. §17-16a-7](#)

IV WHAT SHOULD YOU KNOW?

A. GENERAL PLAN AND DEVELOPMENT CODE

- B. COUNTY LAND USE, DEVELOPMENT & MANAGEMENT ACT (CLUDMA)  
(Utah Code Ann. § 17-27a-101 et. seq.) online at <http://le.utah.gov/UtahCode/title.jsp>

C. STANDARDS OF REVIEW

1. Variances  
[Utah Code §17-27a-702](#)  
[Specht v. Big Water](#), 2017 UT App 75
2. Administrative Appeals and Exhaustion  
[Utah Code §17-27a-703](#)



3. District Court Review
4. Legislative v. Administrative Decisions

D. VESTING (ZONING ESTOPPEL) & PENDING ORDINANCE DOCTRINE

1. Western Land Equities v. City of Logan, 617 P.2d 388 (Utah 1980)
  - a. Vesting as to process
  - b. Vesting as to uses and density
2. Utah Code Ann. § 17-27a-508 codified the principles of *Western Land Equities*.
  - a. An applicant with a completed application that complies with the ordinances is entitled to an approval. (§17-27a-508(1)(a) and (d)).
  - b. The County must process applications in a timely manner (§17-27a-508(1)(e))
  - c. An application “vests” for processing on the date a completed application is submitted. (§17-27a-508(1)(f) and (4)).
  - d. Only those requirements legally adopted may be imposed on an application (§17-27a-508(1)(h) and (i)).
  - e. Counties cannot require schools approval of applications or give “willing to serve” letters (§17-27a-508(3)).
3. Non-Conforming Uses

There is a distinction in land use law between those uses of land which at one point were legal but became non-conforming because of a change in the law, and those uses which have never been legal. The former fall within the legal concept of non-conforming uses or “grandfathered” uses of land. The latter remain illegal uses and have no protection in the law. Black's Law Dictionary 1682 (9th ed.2009) (defining “nonconforming use” as a “[l]and use that is impermissible under current zoning restrictions but that is allowed because the use existed lawfully before the restrictions took effect”)

Utah Code 17-27a-103((45) and (46)

- (39) "Noncomplying structure" means a structure that:
- (a) legally existed before its current land use designation; and
  - (b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other

regulations, excluding those regulations that govern the use of land.

- (40) "Nonconforming use" means a use of land that:
- (a) legally existed before its current land use designation;
  - (b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and
  - (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

**CASES TO KNOW:**

[LJ Mascaro v. Herriman City](#), 2018 UT App 127

[Checketts v. Providence City](#), 2016 UT App 161

[Fuller v. Springville City](#), 2015 UT App 177

**V. REMEMBER . . .**

“In the area of planning and zoning It is not a matter of if litigation will be filed but when. The keys to avoiding lawsuits include these pithy reminders.

- ★ Procedure is as important as substance.
- ★ Substance is as important as process.
- ★ Just because you can, doesn't mean you should.
- ★ Just because you got away with it, doesn't make it right.
- ★ Not getting caught is not the same as creating binding precedent.
- ★ Public clamor doesn't necessarily equate to the public will.
- ★ The public will doesn't necessarily equate to the public good.
- ★ You are the government that the Bill of Rights was written to protect the people from.”

David Church, Esq., *Land Use Primer*, Utah League of Cities & Towns web page <http://ulct.org>